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July 6, 2018

**Filed via ECF**

The Honorable Loretta A. Preska  
United States District Judge, District of the Southern District of New York  
United States Courthouse, Courtroom 12A  
500 Pearl St.  
New York, NY 10007-1312

Re: *Berall v. Verathon, Inc. et al.*, Civil Docket 1:10-cv-05777-LAP-DCF

Your Honor,

Counsel for Defendants Verathon Inc., Pentax of America, Inc. and Aircraft Medical, Ltd., provide this letter in response to the Court's June 22, 2018 Order that "[c]ounsel shall confer and inform Judge Preska by letter no later than July 6, 2018 of the status of the action/remaining claims/defendants and how they propose to proceed." (Doc. No. 99.)

This patent infringement action has been stayed for over seven years. On July 30, 2010, Plaintiff Jonathan Berall, M.D. filed this action against Defendants Verathon Inc., Pentax of America, Inc. Karl Storz Endoscopy-America, Inc., Aircraft Medical, Ltd., LMA North America, Inc., and AirTraQ, LLC, asserting infringement of U.S. Patent No. 5,827,178 (the "'178 patent"). (Doc. No. 1.) On May 11, 2011, the Court stayed this action pending *ex parte* reexamination of the '178 patent. (Doc. No. 78.) Plaintiff's claims against Defendants AirTraQ LLC and Karl Storz Endoscopy-America, Inc. have been dismissed pursuant to stipulation. (Doc. Nos. 38, 87.) As a result, the remaining named Defendants in this action are Verathon Inc., Pentax of America, Inc., Aircraft Medical, Ltd, and LMA North America, Inc. Plaintiff is proceeding pro se.

Based on the above-named Defendants' review of the *ex parte* reexamination proceedings, the U.S. Patent and Trademark Office ("USPTO") rejected all claims of the '178 patent, and Plaintiff appealed this rejection. (Ex. A, Final Rejection; Ex. B, Notice of Appeal.) On June 11, 2018, the USPTO dismissed Plaintiff's appeal for failure to pay the appeal forwarding fee. (Ex. C, Ex Parte Reexamination Notification re: Appeal.) Given that all claims of the '178 patent have been rejected and the appeal stands dismissed, the above-named Defendants believe that Plaintiff's claims in this action should be dismissed with prejudice. However, Defendants have not yet

been able to confer with Plaintiff, and as a result cannot represent to the Court whether Plaintiff plans to take any other steps before the USPTO or in the present case. Further, the above-named counsel have been unable to contact counsel for LMA North America, Inc.

Given these circumstances, the above-named Defendants respectfully suggest that the Court require Plaintiff to file a letter in this action informing the Court whether he will take any further steps before the USPTO regarding the *ex parte* reexamination, and/or whether he will agree to dismissal of this action with prejudice. Based on any response, the Court and Defendants can then determine whether motion practice is necessary to finally dismiss this action.

Regards,

/s/ Mary V. Sooter

Mary (Mindy) V. Sooter

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*On behalf of Aircraft  
Medical, Ltd.*

/s/ Megan E. Bussey

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/s/ Allison H. Altersohn

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